



[Billing Code: 4710-05]

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400-AD14

[Public Notice 7875]

Exchange Visitor Program – Summer Work Travel

AGENCY: Department of State.

ACTION: Interim final rule with request for comment.

SUMMARY: The Department of State (Department) published an initial interim final rule with request for comment on April 26, 2011) (2011 IFR) to amend the regulatory requirements of the Summer Work Travel category of the Exchange Visitor Program. In this second interim final rule (2012 IFR), the Department expands upon and provides guidance on additional regulatory changes and bolsters portions of the regulations to both further to protect the health, safety, and welfare of Summer Work Travel Program participants and to reinforce the cultural exchange aspects of the Program to promote mutual understanding in accordance with the Mutual Educational and Cultural Exchange Act of 1961. The Department has reviewed the comments submitted in response to the 2011 IFR, and this rule reflects those comments. Also, this 2012 IFR reinforces the cultural exchange aspect of the Program through the addition of a cultural component, and provides additional protection to program

participants by describing types of job placements that are appropriate and by expanding the list of jobs prohibited under the Summer Work Travel Program. The enforcement of parts of this IFR is delayed until November 1, 2012.

DATES: This rule is effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], with the exception of 22 CFR 62.32(h)(11) that will go into effect November 1, 2012. The Department will accept written comments from the public up to 60 days from [insert date 60 days after publication in the Federal Register].

ADDRESSES: You may submit comments by any of the following methods:

- Online: Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site and searching on its RIN (1400-AD14) at: <http://www.regulations.gov/index.cfm>.
- Mail (paper, disk, or CD-ROM submissions): U.S. Department of State, Office of Designation, SA-5, Floor 5, 2200 C Street, NW, Washington, DC 20522-0505.
- Email: JExchanges@state.gov. You must include the RIN (1400-AD14) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA-5, Floor 5, 2200 C Street, NW, Washington, DC 20522-0505; phone (202) 632-2805; fax (202) 632-6442.

SUPPLEMENTARY INFORMATION:

Executive Summary:

Statement of Need. In recent years, the work component of the Summer Work Travel Program has too often overshadowed the core cultural component necessary for the Program to be consistent with the Fulbright-Hays Act. In addition, there have been complaints regarding job placements, work conditions, and participant accommodations. As a result, the Department initiated a comprehensive review of the Summer Work Travel Program in mid-2010, and issued the 2011 IFR based on this review. However, events that occurred in the summer of 2011 confirmed to the Department that it needed to enhance its scrutiny of the Summer Work Travel Program and take additional steps to amend regulations to protect program participants.

The Department is keenly aware, however, that the salutary foreign affairs goals of the Exchange Visitor Program, including the Summer Work Travel Program can be seriously jeopardized, when even a single participant has a harmful or abusive exchange experience, or is inappropriately placed without due regard for the core cultural requirements and intended benefits of the Program. Therefore, through this second IFR, the Department seeks to continue: (i) reforming the Summer Work Travel Program; (ii) ensuring that the Program better protects the health, safety, and welfare

of program participants; and (iii) fortifying the Program’s prestige as a world class U.S. public diplomacy initiative.

Statement of Legal Authority. The Exchange Visitor Program (of which the Summer Work Travel Program is one of 15 categories of program types) was authorized by the Mutual Educational and Cultural Exchange Act of 1961 (Pub. L. 87-256, 75 Stat. 527) (Fulbright-Hays Act or Act) and implemented through 22 CFR Part 62. Enacted by the 87th United States Congress on September 21, 1961, the Act’s stated purpose was “to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world...” In the half century since the Act’s passage, millions of people –program participants, Americans with whom they interact, and friends and family of the participants with whom they share their experiences upon returning home – have benefitted from the mutual understanding and peaceful relations that can derive best from such person-to-person contact. The Summer Work Travel Program embodies and carries forward the stated purpose and intent of the Act.

Provisions of the 2011 IFR. The 2011 IFR presented four major changes (and several minor changes) to the Summer Work Travel Program regulations that were designed to strengthen sponsors' oversight of both their program participants and the third parties who assist them in performing the core administrative functions of the Exchange Visitor Program. Those changes were:

1. Sponsors were required to vet and confirm the validity of all host employers and fully vet all job offers;
2. Only Summer Work Travel Program participants from countries that participated in the Visa Waiver Program could depart their home countries without pre-placed jobs;
3. Sponsors were required to fully vet all third parties who they engaged to assist in performing certain enumerated core functions; and
4. Sponsors were required to contact active program participants on a monthly basis to monitor both their welfare and their geographical physical location.

However, in spite of these changes, events that occurred in the summer of 2011 confirmed the need to take additional steps to amend the regulations that safeguard program participants.

Changes to the 2011 IFR. Following the publication of the 2011 IFR, the Department reviewed comments received from 35 parties. Effective immediately, this rule makes further changes to some provisions introduced in the 2011 IFR to reflect

those comments, clarify ambiguities, and make necessary corrections. These changes include:

1. The Department corrected two inadvertent changes to the regulations:
Sponsors must continue to offer participants assistance in finding job placements starting one week (versus two) after participants initiate their job searches; and it reinserted language prohibiting employers from paying participants less than their American counterparts;
2. Sponsors are not required to maintain listings of bona fide job offers (but must offer participants reasonable assistance in finding new jobs);
3. Sponsors are not required to verify the Employee Identification Numbers (EIN) of host employers (although they must obtain them);
4. Sponsors must obtain evidence that potential host employers are registered to do business in the jurisdictions where participants will be placed;
5. Sponsors must input job titles and sites of activity in the Student and Exchange Visitor Information System (SEVIS) prior to participants' visa interviews (and not prior to issuing Forms DS-2019);
6. Host employers may not assist sponsors in the monthly monitoring of participants; and
7. Acknowledging the Department does not have jurisdiction over host employers, the "host employer obligation" section is renamed "host employer

cooperation” and refocused to urge sponsors to work only with host employers willing to make good faith efforts to comply with the requirements therein.

The provisions of the 2011 IFR, as amended by the 2012 IFR, are considered final upon publication of this 2012 IFR. The Department is not soliciting further notice and comment on these provisions.

New Provisions in the 2012 IFR. Additional changes to the Summer Work Travel Program regulations presented in the 2012 IFR allows the U.S. government to better regulate sponsors in order to protect participants, the program itself, and U.S. communities that support Summer Work Travel participants. The 2012 IFR implements new regulations to expand sponsors’ obligations with respect to the cultural component mandated by the Act, clarify characteristics of jobs that are consistent with the purpose of the Act, identify jobs that are inconsistent with the purpose of the Act, and otherwise provide guidance to sponsors to ensure appropriate administration of the Summer Work Travel Program, with one exception, starting with the 2012 summer season. The 2012 IFR clarifies several issues that commenting parties raised:

1. The requirement that participants contact sponsors within ten days following their arrivals does not conflict with the requirement that sponsors validate SEVIS records within 30 days of participants’ arrivals;

2. Individuals enrolled full time in on-line universities are not eligible for the program;
3. Sponsors and foreign entities cannot provide host employers cash or gift incentives (though they may host job fairs);
4. Sponsors must provide *itemized* annual cost schedules for all fees participants pay for program participation (including fees charged by foreign entities);
5. Sponsors must *terminate* (versus *end*) the programs of participants who do not comply with certain requirements that sponsors are obligated to enumerate during program orientation;
6. Sponsor outreach to participants must be answered in order for the contacts to be considered monthly monitoring;
7. Sponsors must annually vet host employers and third parties (foreign and domestic) and each season must reconfirm the number of jobs available with each host employer; and
8. Sponsors must vet initial, subsequent, and additional jobs before participants start work.

A significant enhancement presented in the 2012 IFR is the refocus of the program on the cultural experience of participants, which in recent years has been over-

shadowed by the goal of income production. In addition, the 2012 IFR makes changes to better protect the health, safety, and welfare of participants. To this end, the 2012 IFR makes several changes including adding the following requirements:

1. Sponsors must provide information to incoming participants explaining the cultural component of the Summer Work Travel Program, including guidance on how best to experience U.S. culture and/or descriptions of cultural opportunities that sponsors have arranged;
2. Job placements must be seasonal or temporary and must provide opportunities for participants to interact regularly with U.S. citizens and experience U.S. culture during the work portion (i.e., not travel portion) of their programs;
3. In addition to the job prohibitions expanded in the 2011 IFR, sponsors must not place participants:
 - a. With employers that fill non-seasonal or non-temporary job openings with participants with staggered vacation schedules;
 - b. In positions that require licensing or as operators or drivers of vehicles or vessels for which drivers' licenses are required regardless of whether they carry passengers or not;
 - c. In jobs for which there is another specific J visa category;

- d. In positions requiring work hours that fall predominantly between 10:00 p.m. and 6:00 a.m.;
- e. In positions declared hazardous to youth by the Secretary of Labor at Subpart E of 29 CFR part 570;
- f. In positions that require sustained physical contact with other people and/or adherence to the Center for Disease Control and Prevention's Universal Blood and Body Fluid Precautions guidelines (e.g., body piercing, tattooing, massage, manicure);
- g. In positions that are substantially commission-based and thus do not guarantee that participants will be paid minimum wage in accordance with federal and state laws;
- h. In positions involved in gaming and gambling that include direct participation in wagering and/or betting;
- i. In positions in chemical pest control, warehousing, catalogue/online order distribution centers;
- j. In positions with travelling fairs or itinerant concessionaires;
and
- k. After November 1, 2012, in positions in the North American Industry Classification System's (NAICS) Goods-Producing Industries

occupational categories industry sectors 11, 21, 23, 31-33 (set forth at http://www.bls.gov/iag/tgs/iag_index_naics.htm).

Sponsors are also required to take more active roles in ensuring that participants have access to suitable, affordable, and safe housing and reliable and affordable transportation between their residences and worksites.

The 2012 IFR also includes new protections for U.S. workers. Each season, sponsors must confirm that the host employers with which they intend to place participants:

1. Will not displace U.S. workers at worksites where they place program participants;
2. Have not experienced layoffs in the past 120 days; and
3. Do not have workers on lockout or on strike.

The Department seeks comment on the new provisions presented in the 2012 IFR.

Background

On April 26, 2011, the Department of State (Department) issued an interim final rule with request for comment modifying the regulations of the Summer Work Travel category of the Exchange Visitor Program (2011 IFR) (see 76 FR 23177). Those regulations became effective on July 15, 2011. The Department has reviewed the

comments of 35 parties, and this rule modifies the regulations to reflect those comments. Effective immediately, this rule makes further changes on an interim final basis to the Summer Work Travel Program regulations and requests comments.

The Department is aware of and appreciates the efforts the sponsor community has undertaken to adjust in a short timeframe to the new regulatory model presented in the 2011 IFR. It is imperative, however, to amend further the Summer Work Travel Program regulations before the next large wave of participants arrives. The changes included in the 2012 IFR bear most directly on the health, safety, and welfare of the participants and reinforce the cultural exchange aspects of the Program to promote mutual understanding in accordance with the Mutual Educational and Cultural Exchange Act of 1961, as amended; 22 U.S.C. 2451 et seq. (Fulbright-Hays Act or Act). The Department will propose other modifications to the Summer Work Travel Program later in 2012 through a Notice of Proposed Rulemaking (NPRM).

The focus of the 2012 IFR is three-fold. First, the Department will introduce new requirements to remind sponsors of the centrality of the cultural component of the Summer Work Travel Program and, in this regard, prescribe characteristics of certain job placements and types of cultural activities that can appropriately promote mutual understanding, a core purpose of the Fulbright-Hays Act. Second, the Department will discuss changes it adopted in the 2011 IFR in light of the comments it received and will announce the final regulatory changes associated with that effort. Finally, it

will implement new regulations, most of which are effective with the publication of this rule, to expand sponsors' obligations with respect to the cultural component, clarify characteristics of jobs that are consistent with the purpose of the Act, identify jobs that are inconsistent with the purpose of the Act, and otherwise provide guidance to sponsors to ensure appropriate administration of the Summer Work Travel Program starting with the 2012 summer season, during which roughly 80 percent of all program participants come to the United States.

Summer Work Travel Program. The Summer Work Travel Program allows foreign post-secondary students (mostly between the ages of 18 and 30) to come to the United States – for a maximum of four months – during their major academic breaks to travel and work in largely unskilled jobs. For nearly 50 years, this category of the Exchange Visitor Program has been a part of U.S. public diplomacy efforts, under the auspices of the Fulbright-Hays Act. As reflected in a Statement of Policy dated March 28, 1996 (see 61 FR 13760), this category of the Exchange Visitor Program was implemented to open the program to those persons who were otherwise financially unable to visit the United States. During the initial 50 years of the program, more than one million foreign students have participated in the Summer Work Travel Program. The popularity of this Program – both with participants and U.S. embassies and consulates abroad as part of their public diplomacy efforts – arises from the participants' ability to enjoy cultural exchange experiences while offsetting at

least a portion of their travel costs through temporary employment in the United States. However, despite its popularity, the Program is not without challenges.

In recent years, the work component has too often overshadowed the core cultural component necessary for the Summer Work Travel Program to be consistent with the intent of the Fulbright-Hays Act. Also, the Department learned that criminal organizations were involving participants in incidents relating to the illegal transfer of cash, the creation of fraudulent businesses, and violations of immigration law. There also were increasing numbers of complaints related to the Program, such as reports of improper or unsafe job placements, fraudulent job offers, post-arrival job cancellations, inappropriate work hours, and problems regarding housing and transportation.

In response, the Department initiated a comprehensive review of the Summer Work Travel Program in mid-2010, intended both to enhance the Department's governance of the designated Summer Work Travel Program sponsors and to tighten the regulations these sponsors must follow. To this end, the Department has been re-evaluating the regulations and making changes to the Summer Work Travel Program regulatory model. In January 2011, following a series of meetings with law enforcement agencies, employers, industry associations, and sponsors, the Department adopted a pilot program for Summer Work Travel Program participants from certain countries with a higher prevalence of problems (Pilot Program). The second step to

safeguarding and strengthening the Summer Work Travel Program was incorporating Pilot Program concepts as key elements of the 2011 IFR. The 2011 IFR presented four major changes (and several minor changes) to the Summer Work Travel Program regulations that were designed to strengthen sponsors' oversight of both their program participants and third parties who assist them in performing core functions that are inherent in the administration of the Exchange Visitor Program (i.e., participant screening, selection, orientation, placement, and monitoring; and the promotion of mutual understanding). First, sponsors were required to vet and confirm the legitimacy of all host employers and fully vet all job offers. Second, only Summer Work Travel Program participants from countries that participated in the Visa Waiver Program could depart their home countries without pre-placed jobs. Third, sponsors were required to vet fully all third parties whom they engaged to assist in performing certain enumerated core functions. Finally, sponsors were required to contact active program participants on a monthly basis to monitor both their welfare and their geographical physical location. The incorporation of these concepts into the overall Summer Work Travel Program regulations in the 2011 IFR formally ended the separate Pilot Program.

Events that occurred in the summer of 2011 confirmed the Department's initial assessment that it needed to enhance further its scrutiny of the Summer Work Travel Program and take additional steps to amend regulations that safeguard program

participants. While the 2011 IFR established procedures for confirming the existence of proposed job placements, it did not provide guidance for assessing the suitability of job offers or preventing the displacement of U.S. workers. In August, the Department learned of inappropriate job placements for Summer Work Travel Program participants who were staffing a packaging plant. Summer Work Travel Program participants: (1) were concentrated in single locations for long hours in jobs that provided little or no opportunity to interact with U.S. citizens; (2) were exposed to workplace safety and health hazards; and (3) were subjected to predatory practices through wage deductions for housing costs. These circumstances informed the Department that additional regulatory changes were necessary in order better to regulate the sponsors to protect participants, the program itself and U.S. communities that support Summer Work Travel participants.

As part of the overall Program review, in September 2011, the Department announced and initiated on-site reviews of 14 Summer Work Travel Program sponsors. (See 76 FR 59182 (Sept. 23, 2011).) In addition to assessing sponsor compliance with the current regulations, these reviews allowed the Department to consult with sponsors regarding the impact of the 2011 IFR on their operations. The Department completed these site visits and is in the process of analyzing the results.

Next, the Department announced a cap on the maximum number of Summer Work Travel Program participants for calendar year 2012 and a moratorium on the

designation of additional organizations as sponsors in the Summer Work Travel Program category. (See 76 FR 68808 (Nov. 7, 2011)) Peaking at just over 153,000 participants in 2008, the Summer Work Travel Program will proceed for the near future at a level not to exceed 109,000 participants annually. The cap is sponsor-specific and based on the number of participants for each sponsor with program start dates between January 1 and December 31, 2011 (i.e., for the calendar year). The Department intends to retain these restrictions until it is confident that the program regulations are sufficient to remedy identified concerns.

In November 2011, the Department hosted an open meeting with the sponsor community, including the Alliance for International Educational and Cultural Exchange. On December 13, 2011, the Department issued Guidance Directive 2011-05. See http://j1visa.state.gov/wp-content/uploads/2012/01/2011-GD05-12_13_2011Summer-Work-Travel-A-Cultural-Experience.pdf. The Department used these forums to announce its heightened scrutiny of the Summer Work Travel Program and its intention to publish new program regulations through additional rulemakings, including the 2012 IFR. The Department invited comments on both occasions. A number of sponsors criticized the Department for opting to modify the Summer Work Travel Program regulations through another interim final rule. The Department concluded that it must issue another interim final rule in order to promptly improve its existing regulatory framework given the potential impact on individual

participants' health, safety, and well-being. The use of traditional notice and comment procedures would not allow for implementation of these important safeguards prior to the summer of 2012. Accordingly, the Department is making certain rule changes in the 2012 IFR and will publish additional modifications through NPRM procedures later this year. To further monitor and ensure the health, safety, and welfare of program participants, the Department of State is in discussion with the Department of Homeland Security and other federal agencies and enforcement authorities regarding the appropriateness of an information-sharing memorandum of understanding (MOU). Such MOU would establish guidelines and a protocol for the exchange of, analysis of, and appropriate action on, information indicating possible criminal abuse or misuse of the Summer Work Travel Program.

Cultural exchange. The Summer Work Travel Program is intended to allow foreign nationals, who could not otherwise afford to visit the United States as tourists or students, the opportunity to experience U.S. culture by defraying part of their travel and living expenses by working while in the United States. Over time, however, some sponsors, participants, and host employers lost sight of the central cultural exchange focus of the Act. Additionally, many participants viewed the Program as an opportunity simply to work in jobs that allow them to earn more money than they would in their home countries. The Program's evolution did not comport with the intentions of the Act or the purpose of international exchange programs to increase

mutual understanding. Accordingly, the 2012 IFR refocuses the Summer Work Travel Program towards the U.S. cultural experience and away from its income and labor opportunities.

The cultural dimension of the Summer Work Travel Program experience is essential to all participants. Sponsors must consider the cultural component in all placement decisions. Rather than mandating specific types of cultural programs, however, the Department offers as guidance two examples of ways sponsors can meet the cultural component requirement. Sponsors could organize activities that acquaint participants with recognized features of U.S. culture and history (e.g., national parks, historic sites, major cities, scenic areas) and/or offer activities that engage participants with the communities in which they work and live. A core presumption underlies the Department's renewed focus on the cultural component of the Summer Work Travel Program: solely work-based cultural exposure is insufficient. Only those sponsors that demonstrate that their Summer Work Travel Program participants engage in cultural exchange activities outside of their places of employment will qualify to be considered for biannual re-designation.

Summer Work Travel Program participants historically have been placed in a wide variety of jobs in all 50 states and the District of Columbia. The Department recognizes that it would be difficult, at best, to prescribe specific cultural activities that the current 49 designated sponsors must offer to their program participants. With

this in mind, the Department changes the Summer Work Travel Program regulations to ensure that participants are placed in jobs that are conducive to experiencing U.S. culture. To that end, the 2012 IFR enumerates criteria that sponsors must meet when approving job offers, and it expands the list of prohibited placements. More specifically, it requires sponsors to ensure participants have specific opportunities to interact with U.S. citizens and experience U.S. culture outside their workplaces.

Many sponsors already provide cultural opportunities for their Summer Work Travel Program participants. The Department commends those sponsors and encourages them to share their “best practices” when commenting on the 2012 IFR. Sponsors must focus their placements on jobs that are clearly appropriate under these new regulations and that offer opportunities to interact with U.S. citizens. Sponsors must also enable regular interaction with Americans during work and non-work hours. For example, a significant majority of Summer Work Travel Program participants work in vacation areas – in or near beach communities, amusement parks, and campgrounds in the summer and at or around ski resorts in the winter. These service industry jobs provide routine opportunities for participants to interact with U.S. citizens – both as customers and co-workers.

Although the new placement criteria and prohibitions together establish that the participants’ jobs must provide them interactions with U.S. citizens (e.g., co-workers, customers), such exposure during the course of the work-day will not satisfy the

cultural requirement of the Summer Work Travel Program. Sponsors must intentionally plan and implement cultural activities to augment this quotidian exposure in order to be in compliance with the purpose of the Act. The Department understands that the more widely participants are geographically dispersed, however, the more difficult it may be for sponsors to arrange and/or monitor directly these mandatory cultural events. Accordingly, the Department reassesses both the types of third parties that sponsors may use to assist them in performing core programmatic functions, e.g., promoting mutual understanding, as well as the specific functions third parties may perform.

Specifically, this 2012 IFR allows sponsors to enlist third parties to oversee cultural activities designed to expose participants to U.S. citizens and U.S. culture. That is, domestic third parties – including employers – may assist sponsors in “the promotion of mutual understanding” by arranging sightseeing tours, trips to sporting events, local community activities, etc. As the 2012 IFR modifies the 2011 IFR to allow only sponsors to complete the monthly monitoring requirement, third party arranged cultural activities are not a substitute for the monthly monitoring requirement. The Department reminds sponsors that they are responsible for the actions of third parties they may engage to fulfill the cultural component requirement and that such actions will be imputed to the sponsors. The Department seeks

comment on sponsors' provision of cultural opportunities, especially with respect to best practices that can be shared with the sponsor community.

Comment analysis received on the 2011 IFR. Thirty-five parties submitted comments to the 2011 IFR. Of those, 12 parties were designated sponsors and one was an association that represents designated sponsors. Most of the commenting parties recognized both the value of the Summer Work Travel Program and the need for modified regulations. However, both sponsors and small businesses who hire Summer Work Travel Program participants stated that the regulatory changes were administratively burdensome. Sponsors argued that the Department had understated the cost to implement the changes. Two research organizations and two individual citizens recommended shutting down or sharply reducing the Program's size. The 14 non-sponsor participants who supported the Summer Work Travel Program included small businesses, an amusement park industry association, and individual citizens. The small businesses noted that they often cannot find sufficient numbers of qualified Americans to fill the positions where J-1 exchange visitors are traditionally placed. The Department has carefully considered all comments and has accordingly made modifications to the regulations proposed in the 2011 IFR as described below.

Purpose. One commenting party remarked on redundant language about program duration in the "Purpose" section of the regulations, and the Department has accordingly eliminated that language. However, the refocus of the cultural component

of the Program has been added to this section. The Department has modified the language both to emphasize the cultural aspect of the Program and to call attention to the types of jobs that are appropriate for Summer Work Travel participants.

Duration. Seven parties commented about the length and timing of participants' Summer Work Travel programs. Several of them urged the Department to allow participants to stay past Labor Day, as seasonal employers may require their continued presence in order to meet this final concentration of demand. Others commented that the Department had adopted countrywide dates for program participation without regard for individual schools' academic calendars. Some disputed the requirement that final year students be restricted to those schedules, citing no reason for them to have to return home.

Other than final-year students who are expected to return home to start their careers, participants are expected to return to their studies following participation in the Summer Work Travel Program. Thus, these dates must necessarily reflect academic calendars – without regard for host employers' specific needs. To facilitate appropriate participation in the Summer Work Travel Program, the Department has established country-specific program start and end dates according to the academic year calendars of each country's universities. The Department may modify the list of country-specific program dates should a particular need arise (e.g., a shift in the

academic year in a particular country). The Department notes that it does not allow final year participants to extend their programs beyond the country-specific end dates.

Participant screening and selecting. The 2011 IFR reintroduced the concept of “core” programmatic functions (see 61 FR 13760 (published March 28, 1996)).

Several parties commented on the concept of core functions, seeking further definition and clarification. The six core programmatic functions which are differentiated from more general business administrative functions are: participant screening, selection, orientation, placement, monitoring; and the promotion of mutual understanding.

While the Department requires sponsors to undergo the rigorous designation and re-designation processes, it has correspondingly less influence and oversight over third parties who assist sponsors in the administration of their programs. Accordingly, the new Summer Work Travel Program paradigm prevents wholesale delegation of sponsor duties to parties unknown to the Department both by limiting the functions third parties can perform and by delineating steps sponsors must undertake to confirm the bona fides of such third parties. The Department continues to impute the actions of all third parties to the sponsors that engage them.

The 2011 IFR states that “sponsors are solely responsible for adequately screening and making the final selection of their program participants. . . .” The Department has since realized that third parties should not assist sponsors in the core function of selecting participants, and it modifies the regulations accordingly. However, the

Department broadly construes activity of “screening” to include recruiting, interviewing, assessing English language proficiency, etc. While foreign entities may screen participants, sponsors remain solely – and ultimately – responsible both for setting the standards for screening and for making final participant selection, based upon information foreign entities gathered as part of the screening process.

English language. Two parties commenting on the 2011 IFR remarked about the importance of participants being proficient in English (e.g., safety of students and success of program depend on English language skills). In the 2011 IFR, the Department allowed sponsors to interview participants via video conference, thereby providing sponsors with a low-cost means of interviewing participants “in person.” Despite this change, the Department continues to notice a significant number of Summer Work Travel Program applicants who are denied visas because their English proficiency is not sufficient to participate in the Program. Since the lack of adequate English ability may put participants at risk during their exchanges, the 2012 IFR establishes more explicit English proficiency standards that applicants to the Summer Work Travel Program must demonstrate to their sponsors’ satisfaction. Specifically, applicants must have sufficient English proficiency not just to perform their jobs, but also to navigate daily life; read and comprehend program materials; fully understand their job benefits and responsibilities and their rights and protections; and know how to obtain assistance, if necessary. The Department reminds sponsors that the addition

of video-conferencing as an interview tool provided them a cost-effective means of conducting these interviews themselves should they find foreign entities not fully capable of accurately assessing applicants' English proficiency. The Department will interpret inordinately high visa rejection rates because of insufficient English language proficiency as an indication that sponsors are not sufficiently screening potential applicants.

Accredited academic institutions. The 2011 IFR also added the requirement that participants in the Summer Work Travel Program be “enrolled full-time and pursuing studies at *accredited* post-secondary *academic* institutions located outside the United States” (emphasis added). One party commented on this change, specifically with respect to the absence in the language of a requirement that these institutions have a formal campus of the “bricks and mortar” variety, and not be on-line schools. The Department did not intend to open the door to students enrolled in purely internet-based schools. Summer Work Travel participants must have an academic pull back in their home countries (or in the foreign countries where they are studying) that requires them to leave the United States at the end of their academic breaks. Accordingly, the Department clarifies that the post-secondary institutions in which participants must be enrolled to participate in the Summer Work Travel Program must be classroom based, in addition to being accredited and academic in nature.

Participant orientation. The Department adds to the list of required orientation materials and information that sponsors must provide Summer Work Travel Program participants before they depart their home countries. Sponsors must explain the importance of the cultural component of the Summer Work Travel Program. They must provide guidance on how best to experience U.S. culture and/or describe cultural opportunities they have arranged. For participants with pre-placed jobs, sponsors must provide details on job offers and information about housing and transportation to and from work. Additionally, sponsors must inform participants that they risk program termination if they (1) fail timely to report their arrival and/or changes of residence; (2) start work at un-vetted jobs; and/or (3) fail timely to respond to sponsors' monthly monitoring outreach contacts. Many commenting parties opined that it would be difficult to get college students to respond to sponsors' outreach. The Department disagrees. By providing sufficient orientation and a clear understanding of the conditions of program participation at the outset, sponsors should be able to gain the cooperation of their participants to comply with program rules. The Department encourages sponsors that already achieve this level of cooperation from their participants to share their best practices with the Department during the comment period.

Consequences of non-compliance by participants. With respect to how to respond to participants who fail to meet the obligations enumerated above, the

preamble accompanying the 2011 IFR stated: “As a point of clarification of existing regulations, sponsors are obligated to end the exchange programs of participants who do not report their arrival within ten days following the program start date or who do not report changes in their U.S. addresses or sites of activity within ten days of such moves.” (76 FR 23177, 23180)(April 24, 2011)) During the on-site reviews, at association meetings, and in comments filed in response to the 2011 IFR, many sponsors inquired whether they should simply “end” programs of non-compliant participants’ programs or actually terminate their status in the Student and Exchange Visitor Information System (SEVIS). The Department recognizes that this statement needs further clarification. Sponsors must inform participants that their non-compliance will result in their termination from the program, and that program termination puts at risk their ability to travel to the United States in the future.

Many commenting parties expressed concern that the requirement that participants contact their sponsors within ten days of arrival in the United States conflicted with the requirement that sponsors validate participants’ records in the SEVIS within 30 days. The Department clarifies that this new notification requirement does not change the requirement in 22 CFR 62.70(b) that sponsors update SEVIS records within 21 days of learning of changes of current U.S. addresses, or the requirement in 22 CFR 62.70(d) that sponsors validate SEVIS records of Summer Work Travel Program participants within 30 days of their program start dates. These are obligations of

sponsors with respect to SEVIS maintenance; the new regulatory language imposes an obligation on participants to report their arrivals and any address changes promptly to their sponsors. Since implementing the 2011 IFR, however, the Department has determined that participants cannot change or add jobs independently. If they wish to change or add jobs, they must first consult with their sponsors who must verify the terms and conditions of prospective jobs and fully vet potential host employers. This change has made unnecessary the previous requirement that participants inform sponsors within ten days of changing jobs. Accordingly, the Department modifies the regulations to make clear that the participants' ten-day notification requirement applies only to reporting participants' arrivals and changes of residences (including securing initial residences). It further clarifies that sponsors must inform participants that they may not start, change, or add jobs before their sponsors have vetted the host employers and the terms and conditions of the jobs pursuant to 22 CFR 62.32(n). The Department requires sponsors to act promptly (i.e., within 72 hours) to verify this information and to report back to the participants the results of such action.

The Department considers participants starting work before their sponsors fully vet their jobs to be engaged in unauthorized employment and reminds sponsors of 22 CFR 62.16(b), which states: "An exchange visitor who engages in unauthorized employment shall be deemed to be in violation of his or her program status and is subject to termination as a participant in an exchange visitor program." The

requirement that program participants not change jobs without permission from their sponsors in no way suggests that participants must remain in unsuitable positions such as those that are not consistent with written job offers or in other ways do not meet the expectations of participants or the purpose of the Act. The Department expects that sponsors will not unreasonably withhold their assistance or permission for participants who have valid reasons for wishing to change or add jobs.

Employees at will. One sponsor sought clarification of the requirement that sponsors provide pre-placed participants with information about the “contractual obligations” between the participants and their employers. This party asked what kind of information was required and how a “contract” could exist given that most participants – like their U.S. counterparts in these jobs – would be considered “employees at will.” The Department agrees that Summer Work Travel Program participants are employees at will, but nevertheless requires sponsors to inform participants about the terms and conditions of their job offers. This creates a degree of transparency that can ensure that the participants’ expectations are in line with the jobs and conditions that they will encounter upon their arrival in the United States. The Department is developing a Summer Work Travel Program Job Placement Form (i.e., Form DS-7007) to capture the information necessary for sponsors to demonstrate that they have fully vetted potential jobs (e.g., the name and address of the host employer, the hourly wage, benefits, the range of hours per week the participants

likely will work, whether the host employer has arranged housing, and if so, its cost to the participant). The Department published the form in the *Federal Register* and sought comment on its design (see 76 FR 72996 (Nov. 28, 2011)). Until such time as the DS-7007 Form is finalized and adopted, as a “best practice,” sponsors may voluntarily begin using forms similar to the Form DS-7007 for informing participants about the details of their vetted jobs.

Cultural component. Sponsors are required to inform participants prior to their departure from their home countries about the importance of the cultural aspects of the Summer Work Travel Program. They must provide specific guidance on how participants can avail themselves of cultural opportunities in general as well as identify specific activities that the sponsors intend to arrange to further promote cultural exchange. Sponsors must screen out those applicants whose interests in the Summer Work Travel Program predominantly appear focused on earning income. Accordingly, the Department will view the lack of documented evidence of participants’ cultural activities required by Summer Work Travel Program regulation as, among other things, a deficiency by sponsors adequately to screen and orient program participants. The Department seeks comment on the Program’s refocus on the cultural component and encourages sponsors to share their best practices.

Participant placement. In the 2011 IFR, the Department established a new process by which sponsors must vet both potential job offers and potential host

employers. The Department's experience with this requirement – both for the Pilot Program this past summer and this most recent winter session – has demonstrated the benefits of this new model. No sponsor commenting on the 2011 IFR objected to this new requirement; accordingly, the Department makes no substantive changes to the job and employer vetting requirements. It does clarify, however, that sponsors must vet potential host employers annually and that prior to each season, sponsors must confirm the number of jobs each host employer seeks to fill with program participants. The Department clarifies, however, that placement is one of the core functions that sponsors may not enlist third parties to perform. In this context, placement means matching particular participants with specific job opportunities. In other words, third parties (foreign and domestic alike) may provide *sponsors* with leads for potential jobs, but sponsors must determine the suitability of individual participants for specific jobs and make all placements.

In the 2011 IFR, the Department prohibited sponsors and foreign entities from providing incentives to employers to accept program participants for job placements. In the 2012 IFR, the Department clarifies that participant placement is the sole responsibility of sponsors, i.e., foreign entities may not match participants with available jobs. The Department, however, realizes that despite this restriction, both U.S. and foreign third parties could play an ancillary role in finding job placements, e.g., by informing sponsors or participants (who find their own jobs) about potential

job openings. Accordingly, the 2012 IFR expands the prohibition to include the provision of incentives to employers by all third parties acting on behalf of sponsors. While the regulations continue to prohibit such third parties from actually placing participants, the Department wishes to ensure that third parties or sponsors in no way provide potential host employers with incentives to accept any participants for job placements.

With respect to the definition of “incentives” in this context, seven commenting parties urged the Department to clarify that it does not intend to prohibit sponsors from funding travel expenses for employers of Summer Work Travel Program participants to international job fairs that provide hiring entities the opportunity to meet their prospective workers. The Department understands that the cost of travel, accommodations, meetings, and meals would be included in the cost of such job fairs. It considers job fairs to be opportunities for potential host employers to meet their prospective employees and, therefore, not incentives to hire particular sponsors’ participants. Likewise, the Department does not seek to prohibit meetings between prospective or current host employers and sponsors at mealtimes. However, the Department does consider gifts, cash payments, and trips paid for by sponsors that do not include opportunities to meet prospective participants to be prohibited “incentives” to host employers.

Confirm all jobs. Under the terms of the Pilot Program, sponsors were required to confirm all jobs prior to participants' departures from their home countries by verifying both the bona fides of the potential employers and the terms and conditions of the job offers themselves. In the 2011 IFR, this requirement was extended to all participants from non-Visa Waiver Program countries. In comments on the 2011 IFR, one party urged the Department to allow participants from Visa Waiver Program countries to begin work as soon as they obtained job offers and allow sponsors five days to vet the employers and the jobs in order to allow participants to start work immediately. Theoretically, this could apply also to participants from non-Visa Waiver Program countries who wanted to change or add jobs or to participants from Visa Waiver Program countries both under those circumstances and in the case of their initial employment. The Department respectfully rejects this recommendation because it believes it will cause unnecessary confusion as to which participants could start unverified jobs and under what conditions. Once participants have arrived in the United States and secured job offers, sponsors must vet initial, subsequent, and additional jobs within 72 hours. The Department requires sponsors to have sufficient staff and resources to ensure the jobs of all participants to whom they offer exchange programs are timely and fully vetted. The Department seeks comment on potential barriers to sponsors meeting this 72 hour deadline.

Obligation to work with participants seeking new or additional jobs. The 2011 IFR proposed new requirements for vetting both host employers and the terms and conditions of individual job offers. The Department adopts those provisions with limited change. Although the text of the regulation has been slightly restructured to provide more clarity, the only substantive change the Department makes is in response to comments on the 2011 IFR and during the on-site reviews. There was widespread objection to retaining the requirement that sponsors maintain rosters of bona fide job listings for participants seeking job placements. Some commented that not only is it difficult to keep these lists updated, this requirement is also an anachronism in the Internet era. The Department agrees and eliminates the requirement that sponsors maintain such lists of available jobs. Instead, the Department now explicitly requires sponsors to offer reasonable assistance to participants seeking additional or subsequent jobs (regardless of whether participants were initially direct-placed or self-placed). The 2011 IFR incorrectly changed from one to two weeks the amount of time non-pre-placed participants must attempt to find work before obtaining assistance from their sponsors. The Department clarifies that sponsors are expected to undertake reasonable efforts to assist non-pre-placed participants (i.e., those from Visa Waiver Program countries) who have not found suitable employment within one week of commencing job searches.

The Department recognizes that there are many reasons that participants may be unsatisfied with their initial jobs and that the expectations of some participants may differ from the reality of their placements. Although sponsors are required to make reasonable efforts to find replacement jobs for participants, under certain circumstances, it would be appropriate for sponsors to end (not terminate) programs of participants for whom subsequent suitable jobs cannot reasonably be arranged. While participants who end the work portion of their programs early may travel in the United States before returning home, those with terminated programs may not.

New criteria for appropriate job placements. The Department adds new criteria that sponsors must consider when determining the suitability of job placements. In addition, it expands the list of prohibited job placements. The goal is further to ensure the placement of participants in appropriate jobs that provide them better opportunities to experience U.S. culture and to ensure that participants work in environments that are safe and appropriate for the Exchange Visitor Program. Jobs must be seasonal or temporary in nature. Employment is of a seasonal nature when the required services or labor are traditionally tied to a season of the year by an event or pattern, and employers require labor levels above and beyond existing worker levels. Employment is of a temporary nature when employers' needs for duties to be performed are short-term, a one-time occurrence, a peak load need, or an intermittent need. It is the nature of employers' needs, not the nature of the duties that is controlling.

Sponsors must place participants only in jobs that offer opportunities to interact routinely with U.S. citizens and experience U.S. culture. Sponsors may place participants only in those jobs that adhere to the participant placement criteria listed in 22 CFR 62.32(g)(4-6), which among other things includes prohibited jobs found at 22 CFR 62.32(h). Sponsors must use extra caution when placing participants in positions with host employers in lines of business that have been associated with trafficking in persons (e.g., modeling agencies, housekeeping, janitorial services). When sponsors follow the previously cited regulations and guidance, the result will be job placements that:

- Do not have the effect of displacing U.S. workers, especially young U.S. citizens (18-25 years old), a group that is currently experiencing high unemployment levels;
- Do not overly concentrate program participants or isolate program participants from interactions with U.S. citizens, both of which will diminish the cultural exchange component of the program; and
- Permit participants to work alongside U.S. citizens in the same or similar jobs.

Sponsors may place participants with employment or job placement agencies only under the following three circumstances: First, participants must be employees of and paid by the staffing agencies; second, staffing agencies must provide full-time, primary, on-site supervision of the participants; and third, staffing agencies must

effectively control the work sites, e.g., have hands-on management responsibility for the participants. If these three conditions are not met, staffing agencies are not fulfilling the role of employers, and sponsors may not place participants with them.

Program exclusions. Notwithstanding its development of this new guidance for identifying appropriate jobs, the Department retains and enhances the list of prohibited positions that have traditionally been incorporated in Summer Work Travel Program regulations. As the Department's concern for the health, safety, and welfare of participants and the integrity of the Summer Work Travel Program remain of paramount importance, it views this approach to job selection guidance as both prudent and necessary.

First, the Department clarified that sponsors cannot place participants in jobs as operators or drivers of vehicles or vessels, even if they are not carrying passengers. It also articulated additional examples of prohibited jobs in the adult entertainment industry. Moreover, due to concerns about participants' health, safety and welfare, the Department further expanded this list to include jobs that have already been declared by the Secretary of Labor to be hazardous to youth; jobs that require adherence to the Center for Disease Control and Prevention's Universal Blood and Body Fluid Precautions guidelines and/or require sustained physical human contact; jobs in warehouses; and chemical pest control jobs. Further, jobs that fall under the North American Industrial Classification System (NAICS) Goods-Producing Industries

occupational categories industry sectors 11, 21, 23, 31-33 are prohibited, specifically: Natural Resources and Mining (including Agriculture, Forestry, and Fishing and Hunting as well as Mining, Quarrying, and Oil and Gas Extraction); Construction; and Manufacturing. This prohibition is the only portion of the 2012 IFR that will be effective, not with publication of the 2012 IFR, but on November 1, 2012.

Two other job positions are now excluded. Sponsors may not place participants in positions for which the compensation is substantially commission-based because they do not guarantee that participants will be paid minimum wage in accordance with federal and state standards. Also, positions with traveling fairs or itinerant concessionaires are also now prohibited due to health and safety concerns associated with a nomadic lifestyle, as well as the resulting difficulty in tracking the locations of such participants in SEVIS. Finally, as part of its effort to refocus the program on its cultural purpose, the Department further expands the list of excluded positions in the 2012 IFR to include types of employment that are incompatible with a cultural exchange program: including positions requiring work hours that fall predominantly between the hours of 10:00 p.m. and 6:00 a.m. and positions in catalogue/online order distribution centers. Consistent with Executive Order 13563, and its particular emphasis on the importance of public participation, the Department requests comments on these expanded job prohibitions in this interim final rule.

The Department recognizes that in light of the timing of this interim final rule, the immediate implementation of the NAICS prohibitions at this date may cause serious economic hardship for certain employers, sectors, or locations for the immediate summer 2012 season. For this reason, the Department is adopting a phased approach and implementation of those specific prohibitions will not go into effect until November 1, 2012, after the immediate summer season. On or before that date, sponsors that place participants in these jobs, must either end the participants' programs or place the participants in permitted jobs.

The Department emphasizes that all other provisions of the 2012 IFR are effective immediately upon publication. This means that the programs of participants placed this summer in jobs that will be prohibited starting November 1, 2012 are still subject to all program regulations during the upcoming summer season. For example, sponsors must ensure those positions provide participants opportunities to interact routinely with U.S. citizens during the day and after, do not fall predominantly between the hours of 10:00 p.m. and 6:00 a.m., and do not prevent participants from actively and routinely taking part in cultural activities. In addition, such placements may not create over-concentration of participants in any one location, or displace U.S. citizen workers at the specific worksites.

Housing and transportation. The regulations adopted in the 2011 IFR required sponsors to advise only participants from Visa Waiver Program countries how to find

appropriate and reasonably priced housing. The Department now amends the regulations to include all Summer Work Travel Program participants. When evaluating the suitability of potential jobs, sponsors must consider the availability, affordability, and suitability of local housing and transportation. When host employers do not offer housing and transportation or participants do not wish to avail themselves of employer-provided housing and transportation, sponsors must actively and immediately assist Summer Work Travel Program participants in arranging suitable, affordable, and safe housing, and ensuring that reliable and affordable transportation between their residences and work sites is available. To be considered safe, housing must, at a minimum, meet all applicable local laws and regulations, including with respect to ventilation, utilities, and occupancy rates. If it is difficult for sponsors to identify appropriate housing and/or transportation under certain circumstances, this should signal the sponsors to search for other jobs in other locations. The Department seeks comment on the expanded roles of sponsors in ensuring the availability of appropriate housing and transportation.

Often, host employers provide housing and/or transportation to program participants and reduce their hourly pay or otherwise deduct from their pay to cover the cost of such housing and/or transportation. In these cases, job offers must explicitly describe such arrangements and specify the market value of the housing and/or transportation. In this way, it is clear whether the participants are being

compensated in compliance with program regulations, including compliance with state wage requirements and section 531 of the Fair Labor Standards Act (FLSA), which requires that such deductions be voluntary and not include a profit to the employer or to any affiliated person.

Forms DS-2019. Four parties objected to the requirement that sponsors enter the host employer sites of activities and job titles in SEVIS *prior to* issuing Forms DS-2019. One party commented that this requirement was unworkable because it forces employers to commit months before knowing their summer employment needs. It recommended that, instead, the language be changed to require collection of employment information in SEVIS *before* applicants' visa interviews. Others expressed concern that employers do not know the sites of activity prior to the preparation of Forms DS-2019, and one stated that participants are often assigned specific job titles only after they report to work.

The Department disagrees with respect to participants from non-visa waiver countries. Sponsors must vet their potential employers as set forth at 62.32(n), confirm the terms and conditions of their job offers, and input complete and correct data into SEVIS prior to issuing Forms DS-2019 to participants from non-visa waiver countries. In the rare cases where sponsors do not know the sites of activity, they may initially enter the employers' main addresses in the site of activity fields, noting that such information will change, and update SEVIS prior to the visa interview. Clearly,

such job and employer information is available for participants from visa-waiver countries only if they opt to secure placements prior to departing their home countries – in which case, they will be treated as participants from visa-waiver countries for purposes of determining when such information must be entered into SEVIS.

Accordingly, sponsors can issue Forms DS-2019 for non-pre-placed participants from visa waiver countries prior to entering any of this information into SEVIS. However, sponsors must always vet employers and job offers prior to entering the data into SEVIS.

Participant compensation. Sponsors must ensure that host employers fairly compensate participants for their work. In the 2011 IFR, the Department adopted the requirement that Summer Work Travel Program participants, regardless of age, be compensated at the higher of the applicable state minimum wage or the federal minimum wage. One party commented that the broader and more protective language of the prior regulations (i.e., “shall ensure that participants receive pay and benefits commensurate with those offered to their American counterparts”) should be retained. The Department notes that this language was unintentionally dropped from the 2011 IFR and hereby reinserts it. Another commenting party expressed concern that the regulations did not include the minimum wage exemption for jobs with amusement and recreational establishments found in the FLSA. By reinserting the dropped language, the regulations implicitly recognize the minimum wage exemption of the

FLSA for such placements. If a sponsor has reason to suspect that a participant is not being compensated in accordance with Federal, State or local law, the sponsor must contact the appropriate authorities, including, but not limited to the U.S. Department of Labor's Wage and Hour Division.

Monitoring. There are numerous reasons for sponsors to stay in regular and direct communication with their participants. First, this type of contact allows sponsors to check on participants' health, safety, and welfare. Also, it reinforces the primacy of the sponsor/participant relationship in the Summer Work Travel Program so that participants with concerns about their programs will reach out to their sponsors for assistance should they need it. Further, it provides sponsors with the opportunity to confirm that they have the participants' correct "Current U.S. Addresses" and "Sites of Activity" listed in SEVIS, so they may maintain accurate SEVIS records in the interest of National Security. It also allows sponsors to confirm that participants are enjoying the mandatory cultural experiences. For these reasons, the 2011 IFR expanded the obligations of sponsors to monitor their program participants by requiring personal contact with all participants on a monthly basis. Sponsors must document such monthly contacts, which can be in-person, by telephone, or via email exchange. Many sponsors commenting on the 2011 IFR objected to having to actually reach participants to meet this obligation, suggesting that it would be difficult if not impossible to compel participants to respond to sponsors' outreach. The

Department disagrees and subsequently clarifies that although broadcast or individual texts, emails, or voice messages, for example, may be considered attempts to *initiate* contact with participants, participants must respond to communications in order for such contacts to be considered complete. Sponsors must terminate the programs of participants who exhibit a pattern of failing to respond to the monthly monitoring. Accordingly, sponsors must not place participants in locations where it is difficult for them to access the normal forms of communications.

Sponsors' use of third parties. One commenting party urged the Department to allow foreign entities to participate in the monitoring function of participants, stating that foreign entities provide native language support, and the parents of participants appreciate their supportive roles. The Department recognizes the critical role that foreign entities can play in reaching out to participants when unusual circumstances require clear communication, and it clarifies that these regulations in no way prohibit foreign entities from contacting participants and/or their parents. Such contacts, however, do not count as part of the sponsors' monthly monitoring requirement. The Department does not allow host employers or any other third party to assist in conducting monthly monitoring. If program participants are having problems with their employers or the conditions of their jobs, allowing employers to assist in monthly monitoring effectively denies participants' access to neutral advocates. In sum, sponsors may not delegate their monthly monitoring responsibilities to third

parties, but must themselves initiate, complete, and document monthly contacts with all program participants.

With renewed focus on the cultural component of the Summer Work Travel Program and the understanding that sponsors often place participants throughout the United States, the Department has determined that sponsors may have third parties assist them in the core programmatic function of promoting mutual understanding. That is, sponsors may engage third parties to arrange local activities, sightseeing trips, or other events that allow participants to interact with U.S. citizens and/or learn about U.S. culture. Sponsors may wish to work together to offer joint activities. Sponsors must vet these domestic third parties according to the requirements set forth in Sec. 62.32(n).

Vetting third parties (foreign entities). The 2011 IFR also required sponsors to vet all foreign entities (i.e., overseas agents or partners) that assist them in fulfilling the core programmatic functions that may be conducted outside the United States and to maintain current listings of such parties in a new “Foreign Entity Report.” Specifically, sponsors must obtain proof of these entities’ business licenses, disclosures of previous bankruptcies or pending legal actions, three written references, summaries of the entities’ prior J-1 experience, criminal background check reports, and copies of sponsor-approved advertising materials. After sponsors have successfully vetted foreign entities, they must provide the Department with this

information to allow the Department to update the *Foreign Entity Report*. Although applicants do not need to work with foreign entities, they may not work with those foreign entities who are not included in the *Report*. If any material information (e.g., contact information, financial status, criminal backgrounds of principals, relationship with sponsor) changes, sponsors must promptly provide this information to the Department.

Eight parties commented on these requirements, voicing almost unanimous concern that it would be too expensive to maintain English translations of foreign entities' marketing materials, especially given the Internet-focus of today's advertising environment. They requested that instead, sponsors approve the major marketing themes of their foreign entities. The Department disagrees. The foreign entities' initial outreach to potential program participants sets the stage for participants' expectations about the Summer Work Travel Program. Sponsors must be aware of what the foreign entities are posting on web sites, communicating through social media, and distributing in printed materials to ensure the information conforms to the purpose and intent of the program and meets regulatory requirements. It is important, for example, that the cultural exchange aspects of the program are accentuated, and that students' expectations about how much money they can earn are realistic.

During its on-site reviews, the Department had the opportunity to assess several sponsors' compliance with foreign entity verification requirements for the winter

2011-2012 season. Overall, the Department found that sponsors were readily able to obtain almost all the requested documents without undue cost or burden.

Accordingly, the Department makes only minor changes to the provisions enumerated in this section of the regulations to correct for errors in the text that allowed foreign entities to select participants and failed to require annual vetting of foreign third parties.

Although not included in the regulations, the preamble to the 2011 IFR mentioned that sponsors must obtain notarized financial statements to demonstrate the financial solvency of potential foreign entities (See 76 FR 23177- 23179). Two parties commenting on this language suggested that it would be difficult to obtain notarized financial statements and recommended that the Department require sponsors to obtain copies of bank statements instead. The Department does not believe that a single view of an entity's bank account provides sufficient evidence of its financial viability, while it believes notarized statements are a step in fraud prevention. The Department also clarifies that sponsors must annually update the records and credentials of the foreign entities they engage to help administer their Summer Work Travel Programs.

Additionally, pursuant to 22 CFR 62.32(p)(2), the Department takes this requirement one step further and now requires sponsors to inform the Department when and why particular foreign entities are no longer under contract with them.

Vetting third parties (domestic entities). The 2011 IFR limited the domestic entities that could assist sponsors in performing core programmatic functions to host employers of participants. However, the broad range of structured and planned cultural events that can satisfy the cultural component requires flexibility with respect to the types of third parties sponsors can engage. For example, sponsors may partner with individuals who voluntarily assist in arranging local community events or major international corporations in the tourism line-of-business. As a result, there can be no one-size-fits-all process for vetting such third parties.

Accordingly, sponsors who engage business entities to provide cultural events or activities for which participants must pay (either directly or through the sponsors) must vet these entities according to the standards required for host employers set forth in the 2011 IFR and clarified in the 2012 IFR. In addition, they must enter into written agreements with such parties, and these agreements must explicitly describe the activities or events and itemize all costs. Private individuals or local groups (e.g., local consortia created to assist with the assimilation of Summer Work Travel Participants into the community, including church groups) that do not charge for participation need not be similarly vetted or enter into such written agreements. For this purpose, the Department would not consider, e.g., participants buying their own tickets to or food at local sporting events to be paying for participation, even if an individual or group made the arrangements. Sponsors should engage in assisting the

provision of cultural events only with local individuals or groups that are known and reputable in the community.

The 2011 IFR requires that sponsors directly contact potential employers to verify key information as well as utilize publicly available information to confirm the existence and legitimacy of the potential host employers. Nine parties commented on this proposed rule change, with most of them either seeking clarification of the requirement that they verify potential host employers' Employer Identification Numbers (EINs) or opposing altogether the requirement to obtain EINs. One party recommended that the Department alternatively require sponsors to obtain copies of employers' current business licenses. The Department agrees and replaces the requirement that sponsors verify EINs with the requirement that they obtain proof that the businesses (e.g., corporations, partnerships) are authorized to operate in the state or jurisdiction. Such information is generally available from the websites of each state's Secretary of State. Copies of such registration documents should sufficiently demonstrate that potential host employers are active and registered businesses in the locations where they will place participants.

Commenting parties sought guidance on what constitutes sufficient verification of host employer's worker's compensation coverage. First, sponsors must be aware of current state-specific requirements. Second, sponsors must obtain each host employer's workers' compensation policy identification number and a copy of the

policy's Cover Page and/or Deck Sheet, confirming that the coverage is sufficient and active during the period of placement. Third, sponsors must determine whether the host employer has been recently sanctioned by the U.S. Department of Labor's Occupational Safety and Health Administration or Wage and Hour Division.

Sponsors can check the Department of Labor's sanctioned list at:

<http://ogesdw.dol.gov/>. Sponsors should hesitate to place participants with recently sanctioned employers.

One sponsor inquired whether there were certain conditions under which verification of an employer would be unnecessary (e.g., a previously vetted host employer or a host employer with whom the sponsor has worked for more than two years). The Department understands that many sponsors place program participants with the same host employers year after year. However, the cost and effort required to reconfirm the bona fides of past host employers are modest enough to warrant annual reconfirmation of all organizations' basic information. Also, the Department has observed too many job offers that were used in the summer and again in the winter season even though those host employers had no need for winter seasonal employees. Accordingly, the Department hereby modifies the regulations to require sponsors to vet host employers annually, and each season to verify the actual number of job placements available.

Host employer cooperation. The 2011 IFR also added a new section on host employer obligations. Nine parties commented on these new regulations, noting that the Department has no jurisdiction over employers, rendering unenforceable this entire new section of the rules. There also was concern about the inability of host employers to guarantee that participants would work a certain number of hours each week. Some commented that many seasonal and temporary jobs are dependent upon weather and customer demand, and employers do not guarantee U.S. summer workers a minimum number of hours. While the Department acknowledges these comments, it believes that sponsors should work only with employers who agree to make good faith efforts to comply with certain terms of employment. Accordingly, the Department changed the title of the section “Host employer obligations” to “Host employer cooperation,” thereby removing language suggesting it has jurisdiction over employers and has placed the obligation on sponsors to work only with those employers who would voluntarily commit to comply with these requirements.

With respect to ensuring participants are working sufficient hours to cover their basic expenses and meet their program expectations, sponsors should avail themselves of the monthly contact with participants to inquire about their job satisfaction and financial state. If conditions are such that participants simply are not earning enough money to cover their basic expenses, it is incumbent upon the sponsors to assist them in finding new or additional jobs.

Reporting requirements. Three parties opposed the Department's requirement that sponsors submit semi-annual placement reports. They contended that there is no value in identifying second or subsequent jobs or that the information is already available in SEVIS. The Department disagrees: SEVIS does not retain such information. Moreover, the Department believes that the more carefully sponsors screen participants and match their expectations to vetted job placements, the less frequently participants will change jobs, and such improved screening will be reflected in these reports. Accordingly, it retains this requirement to monitor participant job change rates and other program statistics.

Annual price lists. In the 2011 IFR, the Department adopted a requirement that written agreements between sponsors and foreign entities contain annually updated price lists. During the on-site reviews, Department staff reviewed many such sponsor agreements and determined that the inconsistent formats sponsors used to present program costs made it necessary for the Department to request information in a more standardized format. Accordingly, the Department has qualified this requirement so that sponsors specify the itemized costs that participants must pay to both foreign agents and sponsors to participate in the Summer Work Travel Program. Recent criticism of the program has included alleged exorbitant costs that program participants must pay to work in minimum wage jobs. The Department requests this information in order to protect participants, sponsors, and the integrity of the program.

Cultural exchange. While legitimate employment is an important component that defrays a portion of participants' program costs, it is neither the only element nor the primary element of the J-1 Exchange Visitor Program. Instead of merely lining up summer jobs for participants, sponsors must also consider – at the outset of any job placement consideration – the availability of housing and transportation, as well as the location of the position and the opportunities for cultural activities and community engagement. The balance between work time and free time, including the nature of the work itself and the opportunities for interaction with U.S. citizens during the workday, are also key considerations.

With this in mind, sponsors must place students in jobs that provide daily and ongoing interaction with U.S. citizens. Additionally, sponsors must ensure that participants have opportunities to engage in cultural exchange outside of work. During the biannual re-designation of sponsors as well as in the day-to-day oversight and monitoring of program sponsors, the Department will look specifically for evidence that sponsors are actively facilitating or offering non-work cultural opportunities for participants. Clearly, sponsors should consider the accessibility of cultural opportunities as an important factor in determining whether specific jobs are suitable for program participants. Implementation of cultural activities is further facilitated by group excursions to sporting events, establishing local volunteer networks that pair exchange visitors with local citizens, or otherwise making

intentional efforts to integrate program participants into local communities. Finally, as noted above, sponsors may engage third parties to assist in providing this cultural component to their program participants.

Sponsors are not permitted to use cultural opportunities associated with the participants' employment to fulfill this requirement (e.g., amusement park visits are not acceptable cultural offerings for participants working at amusement parks). Registering participants on publicly available listserves of events is not sufficient by itself to meet this requirement; nor does the Department consider exclusively on-line interactions to be satisfactory cultural offerings. How well sponsors develop and implement the program's cultural component will carry significant weight in the Department's biannual re-designation process for sponsors. The Department will presume that participants' significant non-participation in organized cultural activities is caused by inadequacies in the sponsors' cultural offerings, their inability to adequately calibrate participants' work/non-work experiences, and/or sponsors' failure to select participants who are seeking cultural exchange.

Sponsors are permitted to use cultural offerings as part of the required monthly contact with participants as long as any issues affecting the participants' health, safety, and welfare identified through such contacts are promptly and appropriately addressed. Sponsors should maintain evidence of participants' attendance in cultural events in their program files (e.g., event sign-up lists or emails confirming attendance

at cultural events, signed and executed agreements with local organizations for volunteer service opportunities, cultural or educational excursions, group participation in cultural events).

Regulatory Analysis

Administrative Procedure Act

The Department of State is of the opinion that administration of the Exchange Visitor Program, including the Summer Work Travel Program, is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from Sec. 553 (Rulemaking) and Sec. 554 (Adjudications) of the Administrative Procedure Act (APA). As reflected in the Fulbright-Hays Act, the purpose of such programs is to increase mutual understanding between the people of the United States and those of other countries, “unite us with other nations”, and “to promote international cooperation”. Pursuant to law, policy, and longstanding practice, the Department of State has supervised either directly or through private sector program sponsors or grantee organizations, those foreign nationals who come to the United States as participants in exchange visitor programs, one of which is the Summer Work Travel Program. Summer Work Travel participants come to the United States from over 190 countries and when problems occur in a program such as this, foreign governments often directly engage the Department of State regarding the treatment of their nationals, regardless of who is responsible for the problems.

The Department emphasizes that many provisions of this interim final rule – indeed, the majority – reflect careful consideration of public comments received on a previous interim final rule, issued on April 26, 2011. Those provisions have been subject to detailed comments and this interim final rule has greatly benefited from those comments. At the same time, some provisions of this interim final rule are new. Some of these provisions will be enforced immediately, but others will not be enforced until November 1, 2012.

The Department has two overriding purposes for issuing this interim final rule. One purpose is to put in place urgently needed measures to protect the health, safety, and welfare of foreign nationals entering the United States to participate in the Summer Work Travel Program for a finite period of time (up to four months) and then return to their countries of nationality or last legal permanent residence upon completion of their programs.

The need for such efforts was made evident by a situation where Summer Work Travel participants were placed in nightshift jobs requiring long work hours in a packing warehouse and did not have free time available or the ability to interact daily with Americans, an experience in its totality that is contrary to a cultural exchange program. It is critical that Summer Work Travel sponsors currently planning for the summer of 2012 cycle of Summer Work Travel participants are now informed by regulation that exposure to such placements, and other jobs contrary to a cultural

exchange program, are now strictly prohibited henceforth, starting with the summer 2012 cycles of Summer Work Travel participants. Failure to act swiftly and decisively with an interim final rule to protect the health, safety, and welfare of these program participants will have direct, foreseeable, and substantial adverse effects on the foreign affairs and relations of the United States.

The incidents were sufficiently of concern to cause the Department to engage in outreach to concerned officials from foreign affairs ministries around the world both to assuage them about our response to those incidents and to reaffirm the Department's intent to continue the Summer Work Travel program, but with necessary repairs (as was done in recent discussions the Department had with the governments of four of the largest countries sending Summer Work Travel participants). In short, a number of foreign governments have unequivocally informed the Department that they regard this program as important to their bilateral relationship with the United States and also important to their nationals who seek to participate in that program. Participating countries, therefore, look to the Department to keep the program alive but to fix it in a way that helps protect their nationals.

The second overriding purpose of this interim final rule is to help restore the Summer Work Travel program to its original *raison d'être* as a U.S. public diplomacy program intended to promote international cultural understanding in line with the overall purposes of the Fulbright-Hays Act, as discussed above. These two overriding

goals are mutually reinforcing and provide the requisite foreign affairs function basis on which to adopt this interim final rule. Although the Department is of the opinion that this interim final rule is exempt from the rulemaking provisions of the APA, the Department is aware of the importance of public comment consistent with Executive Order 13563 and is publishing this rule as an interim final rule, with a discretionary 60-day provision for public comment and without prejudice to its judgment that the Exchange Visitor Program is a foreign affairs function. As noted above and discussed below, certain provisions of this interim final rule will not be enforced immediately, and will be delayed until November 1, 2012; comments are specifically invited on those provisions.

In addition, and without prejudice to its determination that the function discussed herein is a foreign affairs function of the United States, the Department also finds that there is “good cause” under 5 U.S.C. 553(b) and (d) for forgoing prior publication of an NPRM and for making this interim final rule effective upon publication, for the reasons summarized in this analysis, above, and explained more fully in the preamble.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim final rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). This interim final rule will not result in an annual effect on the economy of \$100 million or more; a

major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175--Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Regulatory Flexibility Act/Executive Order 13272: Small Business Impacts

Since this interim final rule (2012 IFR) is exempt from 5 U.S.C. 553, and no other law requires the Department of State to give notice of such rulemaking, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and Executive Order 13272, Sec. 3(b). However, to better inform the public as to the costs and burdens of

the this rule upon designated program sponsors, the Department notes that the 2012 IFR will affect the operations of 49 corporate, academic, and tax-exempt program sponsors designated by the Department to conduct Summer Work Travel Programs. Further information follows.

Numbers of Small Businesses

Of the 49 currently designated Summer Work Travel Program sponsors, 33 sponsors have annual revenues of less than \$7 million. These 33 small program sponsors accounted for approximately 36,000 of the 109,000 Summer Work Travel Program participants in 2011.

Prohibited Job Placements

The 2012 IFR specifically expands the list of prohibited job placements (at 22 CFR 62.32(h) *Program Exclusions*) to now include: positions declared hazardous to youth by the Secretary of Labor at 29 CFR 570.50 through 570.72; positions that require sustained physical contact with other people and/or adherence to the Center for Disease Control and Prevention Universal Blood and Body Fluid Precautions guidelines (e.g., body piercing, tattooing, massage, manicure); positions that are substantially commission-based and thus do not guarantee that participants will be paid minimum wage in accordance with federal and state standards; positions in the North American Industry Classification System's (NAICS) Goods-Producing Industries (set forth at http://www.bls.gov/iag/tgs/iag_index_naics.htm), specifically

NAICS Sectors 11, 21, 23, and 31-33: Natural Resources and Mining (including Agriculture, Forestry, and Fishing and Hunting as well as Mining, Quarrying, and Oil and Gas Extraction); Construction; and Manufacturing (e.g., industrial food processing); positions requiring work hours that fall predominantly between the hours of 10:00 p.m. and 6:00 a.m.; positions directly involved in gaming and gambling that include direct participation in wagering and/or betting; positions in chemical pest control, warehousing, or catalogue/online order distribution centers; and in positions with travelling fairs or itinerant concessionaires.

Collectively, these positions accounted for approximately eight percent (8%) of all Summer Work Travel Program placements in 2011. A single large program sponsor, which voluntarily terminated its Summer Work Travel Program designation in 2012, sponsored approximately 40% of 2011 participants placed in jobs prohibited by the 2012 IFR. Of the remaining placements last year in prohibited jobs, 24% were sponsored by small program sponsors. The Department estimates the cost of transferring participants scheduled for prohibited jobs to new placements at approximately \$6,000 to \$18,000 (one to three man hours at \$20 per hour for the approximately 300 new positions to be arranged) for the 24 sponsors that made placements last year that will be prohibited by the 2012 IFR.

The Department notes that there will be some indirect impact in the short-run on the U.S. businesses that have historically employed Summer Work Travel Program

participants in positions prohibited by the 2012 IFR. However, the Department is not imposing any direct regulatory requirements on these U.S. businesses.

Cultural Requirement

The 2012 IFR requires program sponsors to ensure that all participants have opportunities to interact regularly with U.S. citizens and experience U.S. culture during the work portion of their Summer Work Travel Programs and to participate in organized events, trips, or other activities outside of work. The Department estimates that the new cultural component requirement will cost, on average, \$20 per participant, or approximately \$2.2 million for the program. The Department notes that the actual cost of this requirement is likely less than \$20 per participant: many sponsors already provide such cultural activities for their participants and a significant majority of Summer Work Travel Program participants work in touristic areas where such activities may be organized for less than this estimated cost. The Department also emphasizes that it desires the cost of the cultural component not to be a burden on sponsors, and reiterates the number and variety of ways this requirement may be achieved. The Department accordingly estimates that approximately \$720,000 of the cultural component cost of the 2012 IFR would fall upon small program sponsors. Collectively, the 2012 IFR will impose new costs of no more than \$738,000 on the 33 small program sponsors. These costs as a percentage of small sponsor revenue are as follows: for 26 sponsors, the cost of these new requirements are between one and five

percent (1-5%) of their annual revenues; for six sponsors the cost of these new requirements are between five and ten percent (5-10%) of their annual revenues; and for one small sponsor, the cost of these new requirements is approximately 20% of its annual revenue.

The Department determines that costs of the 2012 IFR are not significant to 26 of the 33 small program sponsors. The Department thus certifies that it does not believe that these regulatory changes will have a significant economic impact on a substantial number of small entities.

Executive Order 13563 and Executive Order 12866

As discussed above, the Department is of the opinion that the subject of this rulemaking constitutes a foreign affairs function of the United States, and thus is exempt from the provisions of Executive Order 12866. The Department has nevertheless reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563. The Department of State does not consider this interim final rule to be a “significant regulatory action” under Executive Order 12866, Sec. 3(f), *Regulatory Planning and Review*, and Executive Order 13563. However, to better inform the public as to the costs and benefits of this rule, the Department presents a discussion below.

Affected Population. The Department estimates this rule will affect 49 currently designated Summer Work Travel Program sponsors hosting a maximum of 109,000

participants. These sponsors are responsible for the individuals, many between the ages of 18 and 25, while in the Summer Work Travel Program. Sponsors provide the necessary information, support, and guidance for program participants. Although sponsors will be provided with professional autonomy regarding how they incorporate the requirements presented in the 2012 IFR, the Department estimates sponsors may still incur costs due to the rule.

Costs. Implementation of certain of the provisions set forth in the 2012 IFR may result in costs for the sponsors – those provisions are: implementation of placement prohibitions, implementation of a cultural requirement for program participants, and implementation of additional vetting, reporting, and record keeping requirements.

Prohibited Job Placements. This IFR prohibits certain jobs that sponsors may already have selected for participant placements. The cost of finding replacement jobs will be minimal for the prohibitions that do not become effective until November 1, 2012. For the category of jobs that are immediately prohibited based on concerns for health, safety and welfare, participants already placed in these jobs will need to be re-located to new placements. The Department estimates that number to be no more than 300 and has calculated the cost of transferring participants scheduled for those jobs to be approximately \$6,000 to \$18,000 (one to three man hours at \$20 per hour times 300) for the 24 sponsors that made placements last year that will be prohibited by the 2012 IFR.

Cultural Component. The 2012 IFR requires program sponsors to ensure that all participants have opportunities to interact regularly with U.S. citizens and experience U.S. culture during the work portion of their Summer Work Travel programs and to participate in organized events or other activities outside of work. The Department estimates that the new cultural component requirement will cost an average of \$20 per participant for up to 109,000 participants; or approximately \$2.18 million annually for the program.

Vetting, Reporting, and Recordkeeping. The 2012 IFR places additional vetting, reporting, and recordkeeping requirements on sponsors. The Department calculates that the new requirements may entail up to two additional hours of work per placement for Summer Work Travel sponsors that include an additional half hour for participant orientation; one additional hour towards third party screening, vetting and monitoring; and an additional half hour for the recordkeeping of the cultural component that each Summer Work Travel participant receives. The Department estimates that half of the participating sponsors already incorporate these additional requirements into their business practices. The Department estimates the costs for vetting the host employers and participant placements for all Summer Work Travel sponsors at \$2.18 million [$1/2 \times (2\text{hrs.} \times \$20/\text{hr.} \times 109,000 \text{ participants})$].

Total Costs. The Department estimates that total costs to sponsors from implementation of the 2012 IFR requirements are estimated at \$4.37 to \$4.38 million

in the first year. Recurring costs for the 2012 IFR requirements are estimated at \$4.36 million for the cultural component of the program and the additional vetting, reporting, and recordkeeping component of the program.

Benefits. The 2012 IFR is a continuation of efforts the State Department is implementing based on a comprehensive review of the Summer Work Travel Program. The Department issued the 2011 IFR based on this review. However, events that occurred in the summer of 2011 confirmed to the Department that it needed to enhance its scrutiny of the Summer Work Travel Program and take additional steps to amend regulations to protect program participants. Several foreign governments and entities complained to the Department about job placements, work conditions, and participant accommodations. Additionally, in recent years, the work component of the Summer Work Travel Program has too often overshadowed the core cultural component necessary for the Program to be consistent with the Fulbright-Hays Act.

The changes included in the 2012 IFR bear most directly on the health, safety, and welfare of the participants and serve to reinforce the cultural exchange aspects of the program to promote mutual understanding in accordance with the Fulbright-Hays Act. These changes are expected to protect/improve the health, safety, and welfare of participants by reducing the number of improper or unsafe job placements, fraudulent job offers, post-arrival job cancellations, inappropriate work hours, and problems

regarding housing and transportation. Additionally, these changes are designed to help ensure participants are properly compensated, thereby helping to defray their travel costs.

The cultural dimension of the Summer Work Travel Program experience is essential to all participants. The changes in the 2012 IFR require sponsors to consider the cultural component in all placement decisions. However, rather than mandating a specific type of cultural program, the Department offers flexibility in implementing this requirement. This cultural component is essential to promoting cultural exchanges with foreign governments. A number of foreign governments have unequivocally informed the Department that they regard this program as important to their bilateral relationship with the United States and also important to their nationals who seek to participate in that program. Participating countries, therefore, look to the Department to keep the program alive but to fix it in a way that helps protect their nationals. These changes help accomplish this goal.

The changes in the 2012 IFR will allow the United States government to better regulate the sponsors in order to protect participants, the program itself and U.S. communities that support Summer Work Travel participants. Sponsors are also required to take more active roles in ensuring that participants have access to suitable, affordable, and safe housing and reliable and affordable transportation between their residences and worksites. These changes will help ensure the health, safety, and

welfare of participants as well as promote the intent of the Fulbright-Hays Act through cultural exchanges.

Executive Order 12988

The Department of State has reviewed this interim final rule in light of Sec. 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this interim final rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. Executive Order 12372, regarding intergovernmental consultation on federal programs and activities, does not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this interim final rule (2012 IFR) are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405–0147, Form DS–7000. As part of this rulemaking, the Department is seeking comment regarding the additional administrative burden placed

on sponsors due to the corresponding requirements for the sponsors to maintain additional records in the administration of their programs (*see* 22 C.F.R. 62.10(f)).

(1) Type of Information Collection: Revision of a Currently Approved Collection.

(2) Title of the Form/Collection: Recording, Reporting, and Data Collection Requirements Under 22 CFR Part 62.

(3) Agency form number: DS-7000.

(4) Affected public: This is an expansion and continuation of an existing information collection utilized by the Bureau of Educational and Cultural Affairs in its administration and program oversight of the Exchange Visitor Program (J-Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. The Department seeks comment from Summer Work Travel Program sponsors and other persons directly involved in the administration of the Summer Work Travel Program.

(5) Change to information collected by the Department of State: The existing Placement Report and Foreign Entity Report data collections are current collections required by all Summer Work Travel sponsors, and due to electronic reporting, do not impose any further record keeping burden. The 2012 IFR requires Summer Work Travel sponsors to submit annual price lists for all foreign entities to the Department, which is expected to place a minimal additional administrative burden on the 49 currently designated Summer Work Travel program sponsors. The Department believes that the additional regulatory requirements for documenting interviews,

monthly contact with participants, and vetting host employers are already a standard business practice; however, the new requirements will bring all sponsors into conformity with program administration and will add a minimal administration burden as well.

Based on the current 2011 Foreign Entity Report, Summer Work Travel sponsors are working with approximately 960 foreign entities. The Department requires Summer Work Travel sponsors to conduct thorough vetting and institute formal agreements with each third party entity that assists in certain core programmatic functions. The Department believes this screening is already conducted in the routine administration and only foresees the additional cost of criminal background checks for those sponsors not already conducting such checks. In addition, the 2012 IFR requires Summer Work Travel sponsors to ensure that all participants have opportunities to interact regularly with U.S. citizens and experience U.S. culture during the work portion of their Summer Work Travel Programs and to accordingly organize events, trips, or other activities to provide them exposure to U.S. culture. The Department outlines the increased cost and burden hours associated with this collection requirement and discussed it fully in the Regulatory Flexibility Act/Executive Order 13272: Small Business section above.

(6) You may submit comments by any of the following methods: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory

Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- E-mail: oir_submission@omb.eop.gov. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Fax: 202-395-5806. Attention: Desk Officer for Department of State.

(7) The Department seeks public comment on:

- Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- The accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information to be collected; and collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

(8) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The total number of respondents is estimated to be those 49 organizations designated by the Department to conduct the Summer Work Travel Program activities.

(9) An estimate of the total annual public burden (in hours) associated with the collection: The Department calculates that the new requirements under the 2012 IFR may require up to two additional hours of work per placement for Summer Work Travel sponsors that include an additional half hour for participant orientation; one additional hour towards third party screening, vetting and monitoring; and an additional half hour for the recordkeeping of the cultural component that each Summer Work Travel participant receives.

The Department estimates that for approximately half of the 109,000 annual Summer Work Travel placements, a minimal additional burden will be imposed to the sponsors given current business practices of some sponsors with respect to vetting host employers. The total burden for vetting the host employers and participant placements for all Summer Work Travel sponsors is two hours, or 218,000 hours of work, which is an increase of one hour per placement. The increased burden will be imposed on those sponsors not currently documenting host employer interviews, obtaining references and court documents, financial viability, and housing being provided.

In addition, the Department estimates that the vetting recordkeeping obligations of third party foreign agents is a standard business practice and that the total burden of a half hour per third party, should be added to the estimated half hour that it already takes to vet and establish contracts of the 960 existing foreign agents. The additional

reporting of annual price lists for each foreign entity is expected to be minimal. There are approximately 960 foreign entities and the time to collect and report the price list is expected to be a half hour.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR Part 62 is amended as follows:

PART 62--EXCHANGE VISITOR PROGRAM

1. The authority citation for Part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431-1442, 2451 et seq.; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105-277, Div. G, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104-208, Div. C, 110 Stat. 3009-546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), Pub. L. 107-56, section 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107-173, 116 Stat. 543.

2. Section 62.32 is revised to read as follows:

§ 62.32 Summer work travel.

(a) *Introduction.* The regulations in this section (in combination with any other provisions of 22 CFR Part 62, as applicable) govern participation in Summer Work Travel programs conducted by Department of State-designated sponsors pursuant to the authority granted the Department of State under Public Law 105–277.

(b) *Purpose.* The purpose of this program is to provide foreign college and university students with opportunities to interact with U.S. citizens, experience U.S. culture while sharing their own cultures with Americans they meet, travel in the United States, and work in jobs that require minimal training and are seasonal or temporary in order to earn funds to help defray a portion of their expenses. Employment is of a seasonal nature when the required service is tied to a certain time of the year by an event or pattern and requires labor levels above and beyond existing worker levels. Employment is of a temporary nature when an employer’s need for the duties to be performed is a one-time occurrence, a peak load need, or an intermittent need. It is the nature of employers’ needs, not the nature of the duties that is controlling.

(c) *Duration of participation.* Summer Work Travel participants are authorized to participate in the Exchange Visitor Program for up to four months during the long break between academic years as determined by the Department of State. Extensions of program participation are not permitted.

(d) *Participant screening and selection.* In addition to satisfying the requirements set forth at §62.10(a), sponsors are solely responsible for adequately screening and making the final selection. The screening process requires that sponsors (or vetted foreign entities acting on their behalf) at a minimum must:

(1) Conduct and document interviews with potential participants either in-person or by video-conference;

(2) Verify proficiency in conversational English and reading comprehension through either recognized language tests administered by academic institutions or English language schools or through the required documented interviews;

(3) Select applicants who demonstrate their intention to participate in the cultural aspects of the Summer Work Travel Program.

(4) Confirm that at the time of application, applicants (including final year students) are enrolled full-time and pursuing studies at accredited post-secondary, classroom-based, academic institutions physically located outside of the United States and have successfully completed at least one semester, or equivalent, of post-secondary academic study.

(e) *Participant orientation.* In addition to satisfying the requirements set forth at §62.10(b) and (c), sponsors must provide program participants, prior to participants' departures from their home countries, the following information and/or documentation:

- (1) A copy of the Department of State's Summer Work Travel Participant Letter;
- (2) A copy of the Department of State's Summer Work Travel Program Brochure;
- (3) The Department of State's toll-free help line telephone number;
- (4) The sponsor's 24/7 immediate contact telephone number;
- (5) Information advising participants of their obligations to notify their sponsors within ten days after they arrive in the United States and within ten days after they initially secure or change residences;
- (6) Information advising participants that they may not begin working at initial, replacement, or additional jobs until their sponsors have verified the terms and conditions of such employment and fully vetted their host employers as set forth at paragraph (n) of this section;
- (7) For participants with jobs secured prior to departing from selected home countries, documentation explaining the terms and conditions of such jobs and providing information about available housing and transportation to and from work;
- (8) Information explaining the cultural component of the Summer Work Travel Program, including guidance on how to best experience U.S. culture and/or descriptions of cultural opportunities arranged by the sponsor; and
- (9) Information explaining that sponsors will terminate the programs of participants who fail to comply with enumerated program regulations (i.e., reporting

their arrivals, reporting changes of residence, not starting work at unverified jobs, responding to sponsor monthly outreach/monitoring efforts).

(f) *Cultural exchange.* (1) Sponsors must ensure that all participants have opportunities to work alongside U.S. citizens and interact regularly with U.S. citizens to experience U.S. culture during the workday portion of their Summer Work Travel programs; and

(2) Sponsors must ensure that all participants have opportunities to engage in cultural activities or events outside of work by planning, initializing, and carrying out events or other activities that provide participants' exposure to U.S. culture.

(g) *Participant placement.* (1) Sponsors and third parties acting on their behalf may not pay or otherwise provide any incentive to employers to accept program participants for job placements with such employers.

(2) Sponsors must confirm initial, replacement, and additional jobs placements of all Summer Work Travel Program participants before participants may start work by verifying, at a minimum, the terms and conditions of such employment and fully vetting their host employers as set forth at paragraph (n) of this section. Once participants have arrived in the United States and identified initial, replacement, or additional jobs, sponsors must vet such jobs within 72 hours.

(3) Sponsors must not pose obstacles to job changes, but must offer reasonable assistance to participants wishing to change jobs regardless of whether their jobs were secured by the sponsors (direct-placed) or by the participants (self-placed).

(4) Sponsors may place participants only in jobs that:

(i) Are seasonal or temporary as defined in paragraph (b) of this section; and

(ii) Provide opportunities for regular communication and interaction with U.S. citizens and allow participants to experience U.S. culture.

(5) Sponsors may not place participants in jobs:

(i) That require licensing;

(ii) That are on the program exclusion list set forth at paragraph (h) of this section;

or

(iii) For which there is another specific J visa category (e.g., Camp Counselor, Trainee, Intern).

(6) Sponsors may not place participants with staffing agencies unless the placements meet the following three criteria:

(i) Participants must be employees of and paid by the staffing agencies;

(ii) Staffing agencies must provide full-time, primary, on-site supervision of the participants;

(iii) Staffing agencies must effectively control the work sites, e.g., have hands-on management responsibility for the participants.

(7) Sponsors may not place participants with employers that fill non-seasonal or non-temporary job openings with exchange visitors with staggered vacation schedules.

(8) Sponsors must use extra caution when placing students in positions at employers in lines of business that are frequently associated with trafficking persons (e.g., modeling agencies, housekeeping, janitorial services).

(9) Sponsors must consider the availability of suitable, affordable housing (e.g., that meets local codes and ordinances) and reliable, affordable, and convenient transportation to and from work when making job placements.

(i) If employers do not provide or arrange housing and/or transportation, or if participants decline employer-provided housing or transportation, sponsors must actively and immediately assist participants with arranging appropriate housing and transportation. .

(ii) If employers provide housing and/or transportation to and from work, job offers must include details of all such arrangements, including the cost to participants; whether such arrangements deduct such costs from participants' wages; and the market value of housing and/or transportation in accordance with the Fair Labor Standards Act regulations set forth at 29 CFR Part 531, if they are considered part of the compensation packages.

(10) For participants who are nationals of non-Visa Waiver Program countries and participants who are nationals of Visa Waiver Program countries with job placements

screened in advance by the sponsors (direct placement) or jobs found by the participants (self-placement), prior to issuing Form DS-2019, sponsors must vet the potential employers as set forth at paragraph (n) of this section, confirm the terms and conditions of the job offers, and input complete and correct data into the Student and Exchange Visitor Information System (SEVIS) pursuant to the requirements set forth in §62.70(f).

(11) Sponsors of applicants who are nationals of Visa Waiver Program countries and who have not secured jobs prior to departing from their home countries must:

(i) Ensure that such participants receive pre-departure information that explains how to seek employment and secure lodging in the United States, and clearly identifies the criteria for appropriate jobs set forth at paragraph (g) of this section and the categories of employment and positions that are on the program exclusion list set forth at paragraph (h) of this section;

(ii) Ensure that such participants have sufficient financial resources to support themselves during their searches for employment;

(iii) Assist participants who have not found suitable employment within one week of commencing their job searches;

(iv) Instruct participants of their obligation to notify their sponsors when they obtain job offers (and that they cannot start such jobs until the sponsors vet them); and

(v) Promptly (i.e., within 72 hours) confirm the initial jobs of such participants, at a minimum, by verifying the terms and conditions of such employment and fully vetting their host employers as set forth at paragraph (n) of this section.

(h) *Program exclusions.* Sponsors must not place participants:

(1) In positions that could bring notoriety or disrepute to the Exchange Visitor Program;

(2) In sales positions that require participants to purchase inventory that they must sell in order to support themselves;

(3) In domestic help positions in private homes (e.g., child care, elder care, gardener, chauffeur);

(4) As pedicab or rolling chair drivers or operators;

(5) As operators or drivers of vehicles or vessels for which drivers' licenses are required regardless of whether they carry passengers or not;

(6) In positions related to clinical care that involves patient contact;

(7) In any position in the adult entertainment industry (including, but not limited to jobs with escort services, adult book/video stores, and strip clubs);

(8) In positions requiring work hours that fall predominantly between 10:00 pm and 6:00 am;

(9) In positions declared hazardous to youth by the Secretary of Labor at Subpart E of 29 CFR part 570;

(10) In positions that require sustained physical contact with other people and/or adherence to the Centers for Disease Control and Prevention's Universal Blood and Body Fluid Precautions guidelines (e.g., body piercing, tattooing, massage, manicure);

(11) In positions that are substantially commission-based and thus do not guarantee that participants will be paid minimum wage in accordance with federal and state standards;

(12) In positions involved in gaming and gambling that include direct participation in wagering and/or betting;

(13) In positions in chemical pest control, warehousing, catalogue/online order distribution centers;

(14) In positions with travelling fairs or itinerant concessionaires;

(15) In positions for which there is another specific J category (e.g., camp counselor, intern, trainee); or

(16) After November 1, 2012, in positions in the North American Industry Classification System's (NAICS) Goods-Producing Industries occupational categories industry sectors 11, 21, 23, 31-33 numbers (set forth at http://www.bls.gov/iag/tgs/iag_index_naics.htm).

(i) *Participant compensation.* (1) Sponsors must inform program participants of Federal, State, and Local Minimum Wage requirements, and ensure that at a minimum, participants are compensated at the higher of:

(i) The applicable Federal, State, or Local Minimum Wage (including overtime);

or

(ii) Pay and benefits commensurate with those offered to their similarly situated U.S. counterparts.

(2) Sponsors must demonstrate that participants are also compensated according to the above standards in the following (and similar) situations:

(i) The host employers provide housing and/or transportation as part of participants' compensation, but the compensation package does not explain that the lower hourly wage reflects such benefits; or

(ii) The employers compensate participants on a "piece" basis (e.g., number of rooms cleaned). If at the end of each pay period, the participant's earnings under the piece rate do not equal at least the amount the participant would have earned had the participant been paid the predominant local wage as provided in subparagraph (1), the participant's pay must be supplemented at that time so that the participant's earnings are at least as much as the required local wage as provided in subparagraph (1).

(3) Sponsors must ensure that appropriate assistance is provided to participants on an as-needed basis and that sponsors are available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(j) *Monitoring*. Sponsors must:

(1) Maintain, at a minimum, monthly personal contacts with program participants. Such contact may be in-person, by telephone, or via exchanges of electronic mail (including a response from the participant) and must be properly documented. Sponsors must promptly and appropriately address issues affecting the participants' health, safety, and welfare identified through such contacts; and

(2) Provide appropriate assistance to participants on an as-needed basis and be available to participants (and host employers) to assist as facilitators, counselors, and information resources.

(k) *Internal controls.* Sponsors must utilize organization-specific standard operating procedures for training and supervising all organization employees. In addition, sponsors must establish internal controls to ensure that employers and/or foreign entities comply with the terms of agreements with such third parties involved in the administration of the sponsors' exchange visitor programs (i.e., affect the core programmatic functions).

(l) *Sponsors' use of third parties.* (1) If sponsors utilize foreign third party entities to assist in fulfilling the core programmatic functions of screening and orientation that may be conducted outside the United States, they must first obtain written and executed agreements with such third parties. For the purpose of this section, U.S. entities operating outside the United States (or its possessions or territories) are considered foreign entities. At a minimum, these written agreements must:

(i) Outline the obligations and full relationship between the sponsors and such third parties on all matters involving the administration of the sponsors' exchange visitor programs;

(ii) Delineate the parties' respective responsibilities;

(iii) Include annually updated price lists for Summer Work Travel Programs marketed by the foreign entities including itemizations of all costs charged to participants;

(iv) Contain representations that such foreign entities will not engage in, permit the use of, or otherwise cooperate or contract with other third parties (including staffing or employment agencies or subcontractors) for the purpose of outsourcing any core programmatic functions of screening and orientation covered by the agreement; and

(v) Confirm that the foreign entities agree not to pay or provide incentives to employers in the United States to accept program participants for job placements.

(2) If sponsors utilize domestic third party entities to assist in fulfilling the core programmatic functions of orientation and promoting mutual understanding, they must first obtain written and executed agreements with such third parties. Domestic third parties engaged by sponsors may not engage or subcontract any other parties to assist in fulfilling these core programmatic functions. Only host employers may assist in providing orientation to program participants. At a minimum, these written agreements must:

(i) Outline the obligations and full relationship between the sponsors and such third parties on all matters involving the administration of the sponsors' exchange visitor programs; and

(ii) Delineate the parties' respective responsibilities.

(m) *Vetting third party foreign entities.* Sponsors must undertake appropriate due diligence in the review of potential overseas agents or partners (i.e., foreign entities) who assist in fulfilling the sponsors' core programmatic functions that may be conducted outside the United States (i.e., screening and orientation) and must, at a minimum, annually review and maintain the following documentation for potential or existing foreign entities:

(1) Proof of business licensing and/or registration to enable them to conduct business in the venue(s) where they operate;

(2) Disclosure of any previous bankruptcy and of any pending legal actions or complaints against such an entity on file with local authorities;

(3) Written references from three current business associates or partner organizations;

(4) Summary of previous experience conducting J-1 Exchange Visitor Program activities;

(5) Criminal background check reports (including original and English translations) for all owners and officers of the organizations;

(6) A copy of the sponsor-approved advertising materials the foreign entities intend to use to market the sponsors' programs (including original and English translations); and

(7) A copy of the foreign entity's notarized recent financial statements.

(n) *Vetting domestic third party entities.* Annually, sponsors must undertake appropriate due diligence in the vetting of domestic third parties who assist in the promotion of mutual understanding and potential host employers.

(1) Sponsors must ensure that third parties assisting in promoting mutual understanding (i.e., providing opportunities for participants to engage in cultural activities) are reputable individuals or organizations that are qualified to perform the activities agreed to and that they have sufficient liability insurance, if appropriate. All third parties that are registered business entities must be vetted according to the host employer procedures set forth in paragraphs (n)(2)(i) through (iii) of this section.

(2) Sponsors must ensure that potential host employers are legitimate and reputable businesses by, at a minimum:

(i) Making direct contact in person or by telephone with potential employers to verify the business owners' and/or managers' names, telephone numbers, email addresses, street addresses, and professional activities;

(ii) Utilizing publicly available information, for example, but not limited to, state registries, advertisements, brochures, Web sites, and/or feedback from prior participants to confirm that all job offers have been made by viable business entities;

(iii) Obtaining potential host employers' Employer Identification Numbers and copies of their current business licenses; and

(iv) Verifying the potential host employers' Worker's Compensation Insurance Policy or equivalent in each state where a participant will be placed or, if applicable, evidence of that state's exemption from requirement of such coverage.

(3) At the beginning of each placement season, sponsors must confirm:

(i) The number of job placements available with host employers;

(ii) That host employers will not displace domestic U.S. workers at worksites where they will place program participants; and

(iii) That host employers have not experienced layoffs in the past 120 days and do not have workers on lockout or on strike.

(o) *Host employer cooperation.* Sponsors may place participants only with host employers that agree to:

(1) Make good faith efforts to provide participants the number of hours of paid employment per week as identified on their job offers and agreed to when the sponsors vetted the jobs;

(2) Pay eligible participants for overtime worked in accordance with applicable State or Federal law;

(3) Notify sponsors promptly when participants arrive at the work sites to begin their programs; when there are any changes or deviations in the job placements during the participants' programs; when participants are not meeting the requirements of their job placements; or when participants leave their positions ahead of their planned departures;

(4) Contact sponsors immediately in the event of any emergency involving participants or any situations that impact their health, safety, or welfare; and

(5) In those instances when the employer provides housing or transportation, agree to provide suitable and acceptable accommodations and/or reliable, affordable, and convenient transportation.

(p) *Reporting requirements.* Sponsors must electronically comply with the following reporting requirements utilizing Department-provided templates:

(1) Submit placement reports on January 31 and July 31 of each year, identifying all Summer Work Travel Program participants who began exchange programs during the preceding six-month period. The reports must include the exchange visitors' names, SEVIS Identification Numbers, countries of citizenship or legal permanent residence, names of host employers, and the length of time it took non-pre-placed

participants to secure job placements. For participants who change jobs or have multiple jobs during their programs, the report must include all such placements;

(2) Maintain listings of all active foreign agents or partners on the Foreign Entity Report by promptly informing the Department of any additions, deletions, or changes to foreign entity information by submitting new versions of their reports that reflect all current information. Reports must include the names, addresses, and contact information, including physical and mailing addresses, telephone numbers, and email addresses of all foreign entities that assist the sponsors in fulfilling the provision of core programmatic services. Sponsors must utilize only vetted foreign entities identified in the Foreign Entity Report to assist in fulfilling the sponsors' core programmatic functions outside the United States, and they must inform the Department promptly when and why they have cancelled contractual arrangements with foreign entities; and

(3) Submit annual participant price lists to the Department on January 31 of each year in a format approved by the Department to provide itemized breakdowns of the costs that exchange visitors must pay to both foreign agents and sponsors to participate in the Summer Work Travel Program on a country-specific (and, if appropriate, foreign agent-specific) basis.

May 4, 2012

(Date)

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[FR Doc. 2012-11253 Filed 05/10/2012 at 8:45 am; Publication Date: 05/11/2012]